

Department of Land and Natural Resources

Amendments to Chapters 13-230 and 13-231, Hawaii Administrative Rules

1. Section 13-230-8, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

“§13-230-8 Definitions. \*\*\*

“Cruise vessel” means a large passenger vessel, other than a vessel operating under a certificate of public convenience or necessity, that stops at one or more harbors or ports of call within the State for the purpose of embarking and disembarking passengers during a cruise between its port of origin and its destination port.”

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[Eff 2/24/94; am and comp ] (Auth: HRS "200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS "200-2, 200-4, 200-10, 200-22, 200-24)

2. Section 13-231-58, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-58 Limitations on the number of commercial activity permits for vessels assigned [permanent] moorings. [(a) The total number of valid commercial permits which may be issued for vessels assigned permanent mooring in Manele small boat harbor shall not exceed ten per cent of the available berths.] [(b)] (a) The total number of valid commercial activity permits [which] that may be issued for vessels [assigned permanent mooring] moored in the following [small boat harbors] state boating facilities are:

<u>[Harbor] State boating facility</u>	<u>Number of commercial activity permits</u>
(1) Ala Wai	0
(2) Keahi	0
(3) Heeia Kea	7
(4) Haleiwa	[8] <u>12</u>
(5) Waianae	[15] <u>30</u>
(6) Nawiliwili	[10] <u>15</u>
(7) Port Allen	12
(8) Kikiaola	[3] <u>7</u>

(9) Kukuiula	[4] <u>5</u>
(10) Hana	2
(11) Kaunakakai	9
(12) <u>Hale o Lono</u>	<u>5</u>
[(12)] <u>13</u> Lahaina	[30] <u>31</u>
[(13)] <u>14</u> Maalaea	[29] <u>28</u>
[(14)] <u>15</u> Honokohau	[120] <u>135</u>
[(15)] <u>16</u> Kawaihae (north)	4
[(16)] <u>17</u> Kawaihae (south)	14
[(17)] <u>18</u> Kailua-Kona	[3] <u>16</u>
[(18)] <u>19</u> Keauhou	6
[(19)] <u>20</u> Wailoa	20
[(20)] <u>21</u> Reed's Bay	3
(22) <u>Manele</u>	<u>2</u>

[(c) Notwithstanding the provisions of subsections (a) and (b) limiting the number of commercial permits which may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial permit on the effective date of these rules for the above listed small boat harbors may retain and apply for reissuance of the commercial permit, provided that all other requirements of these rules are met.

(d)] (b) [Except for Lahaina Harbor, the provisions of subsection (b) limiting the number of commercial permits which may be issued for vessels moored in a small boat harbor shall not preclude the owner of a vessel moored elsewhere holding a commercial permit for that small boat harbor from being issued a regular mooring permit for the small boat harbor and retaining] Upon approval by the department, a person or corporation possessing a valid commercial activity permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection (a), and retain the commercial activity permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial activity permits for vessels moored elsewhere shall be reduced accordingly. [The owner of a vessel issued a] A regular mooring [permit] permittee [and] who possesses a valid commercial activity permit may [, subject to prior approval of the department,] relinquish the regular mooring permit and retain the commercial activity permit, provided that the total number of valid commercial activity permits for vessels moored in the [small boat harbor] state boating facility plus the number of commercial activity permits for vessels moored elsewhere are not exceeded, and that the category of commercial activity permits

assigned to vessels moored elsewhere pursuant to section 13-231-59(c) shall not exceed the passenger capacity of the vessel formerly operated in the state boating facility.”

[Eff 2/24/94 am and comp ] (Auth: HRS "200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS "200-2, 200-3, 200-4, 200-22, 200-24)

3. Section 13-231-59, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-59 Limitations on commercial activity permits for vessels moored elsewhere. (a) [The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding] Notwithstanding section 13-231-57, the department may issue, on a case by case basis, a limited number of commercial activity permits to [owners of vessels moored] moor elsewhere [for use of small boat harbor facilities] in an offshore mooring area when there are no regular mooring permits available within a harbor provided that [The number and categories of those commercial permits shall be based on] the physical capacity of the [small boat harbor facilities to] pier, wharf, landing or ramp within the harbor can accommodate the additional volume of activity expected to be generated by the [additional permits,] commercial activity. [and shall be determined by the] The department shall determine the physical capacity of the pier, wharf, landing or ramp within the harbor on a case-by-case basis for each [small boat harbor] state boating facility subject to the limitations listed in subsection (b).

(b) No commercial activity permittee possessing a vessel moored elsewhere permit shall use any [small boat harbor] state boating facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial activity permit for that vessel, or the vessel is exempt from commercial activity permit requirements under the provisions of subsection 13-231-57(c) or as otherwise [permitted] allowed by the department. “Commercial purposes” as used in this subsection includes the staging, loading and discharge of passengers or supplies at a [state] state boating facility for further transport to a vessel’s offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial activity permits for vessels moored elsewhere [which] that may be issued for each [small boat harbor] state boating facility shall be as follows:

- (1) Maalaea harbor: twenty;
- (2) Lahaina harbor: sixteen;
- (3) Manele and Heeia-Kea harbors: six each, except that for Heeia-Kea, commercial permits shall be limited to vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department; provided that there shall be no increase in the level

of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990; and

- (4) All other small boat harbors: no limit. These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.]

<u>State boating facility</u>	<u>Number of commercial activity permits for vessels moored elsewhere</u>
(1) <u>Maalaea</u>	<u>21</u>
(2) <u>Lahaina</u>	<u>15</u>
(3) <u>Manele</u>	<u>8</u>
(4) <u>Waianae</u>	<u>10</u>
(5) <u>Haleiwa</u>	<u>10</u>
(6) <u>All others</u>	<u>none; provided that all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.</u>

(d) Each commercial activity permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the vessel named in the permit:

- (1) Category I- one to twenty-four passengers
- (2) Category II- twenty-five to forty-nine passengers
- (3) Category III- fifty to seventy-four passengers
- (4) Category IV- seventy-five to ninety-nine passengers
- (5) Category V- one hundred to one hundred forty-nine passengers

(e) No commercial activity permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine[.], [and no existing] No commercial activity permit [issued] for a vessel moored elsewhere shall be [issued a permit] re-issued whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the original permit was assigned.

(f) The department [reserves the right to] may impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of [small boat harbor] state boating facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing

commercial activity permits issued by the department. [Refusal of] If a permittee fails to [accept or] comply with the additional restrictions, [implemented in this manner shall be cause for immediate] the department may revoke [termination of] the [use] commercial activity permit in accordance with section 13-231-6.

(g) Use of any vessel in violation of this section may be cause for the revocation of [termination of all small boat harbor use] permits, in accordance with section 13-231-6, issued to the owner by the department for the use of the state boating facility.”

[Eff 2/24/94 am and comp ] (Auth: HRS "200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS "200-2, 200-3, 200-4, 200-22, 200-24)

4. Section 13-231-61, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-61 [Reissuance] Renewal of commercial activity permits. (a) Within ninety days prior to the expiration of a commercial activity permit, time and resources permitting, the department may inform the commercial activity permittee, in writing, that the commercial activity permit is due to expire.

[(a)] (b) Except for commercial activity permits issued through the public auction process, [The] the department [may] shall reissue a commercial activity permit provided that the commercial activity permittee has:

- (1) Completed a new application, within sixty days of being informed by the department or sixty days prior to the expiration date of the commercial activity permit, whichever occurs earliest;
  - (2) Provided a copy of the tax clearance certificate or a letter from the state department of taxation that confirms the applicant is paying taxes;
  - (3) Provided proof of insurance coverage as described in section 13-231-65;
  - (4) Provided a copy of the United States Coast Guard certificate of inspection for a vessel carrying more than six passengers;
  - (5) Complied with all rules and laws of the department, State, and city and county, as they relate to the specific business activity;
  - (6) Complied with the conditions of the commercial activity permit;
  - (7) Paid all fees due the department for the commercial activity permit or any other permit associated with the commercial activity;
  - (8) Paid all fees and charges due and payable to the department and no violations are outstanding;
  - (9) Met the minimum revenue standard, in accordance with section 200-10, HRS, which shall be the applicable fee as provided in section 13-234-25; and
- [(1)] (10) [The] Met the following minimum gross receipts requirements during the preceding twelve-month period under the commercial activity permit for which the application for reissuance has been submitted [, equals or exceeds the following minimums as applicable]:

(A) Vessels used for bare boat (demise) charters and charter sail boats	[\$ 7,000] \$15,000
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(B) Vessels registered by the State or documented by the U.S. Coast Guard to carry six passengers or less, including charter fishing boats	[\$15,000] <u>\$30,000</u>
(C) Vessels certified by the U.S. Coast Guard to carry seven to twenty-five passengers.	[\$45,000] <u>\$90,000</u>
(D) Vessels certified by the U.S. Coast Guard to carry [twenty-five] <u>twenty-six</u> to forty - nine passengers	[\$85,000 ] <u>\$170,000</u>
(E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers	[\$125,000] <u>\$250,000</u>
(F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers	[\$250,000] <u>\$500,000</u>
(G) Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above	[\$7,000] <u>\$15,000</u> ; or

[(2)] (11) The permittee applies to the department in writing for reissuance of the permittee's commercial permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel as prescribed in this subsection was due to:

- (A) The sinking, loss, or destruction of the permittee's vessel;
- (B) The permittee's vessel being inoperative in excess of sixty days due to disability of the permittee;
- (C) The permittee's vessel was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated; or
- (D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial permit would be fair and warranted, and the application for reissuance is approved by the department[; and].

[(3)] All fees and charges due and payable to the department have been paid and no violations are outstanding.]

[(b)] (c) No commercial permit shall be issued to any permittee whose commercial permit has been terminated for cause, provided that the permittee may apply for a new commercial permit after one year has expired from the date of termination of the commercial permit, all fees and charges owing the State have been paid, and the permittee is in compliance with federal and state laws.

[(c)] (d) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of

twelve months in order to retain use permits upon the transfer of any interest in that corporation.

(e) The department may reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application. The applicant shall be afforded the opportunity to submit a new application upon the correction of the deficiencies cited in the notification of rejection of the original application.

(f) The department shall have thirty days from the departmental date stamp on the application to review the application and inform the applicant by certified return receipt mail of any deficiencies in the application or in the supporting documentation or of the decision not to renew a commercial activity permit.

(g) The commercial activity permittee shall have not more than thirty days from the date of the denial to initiate corrective action to address deficiencies as described in this section. Failure to initiate corrective action by the expiration date of the existing permit shall cause the existing permit to automatically expire and the permit shall be offered to the next applicant.

(h) Notwithstanding the conditions of subsection (g), the department may provide additional time to correct deficiencies if the department determines there is good cause.

(i) Withdrawal of an application for a commercial activity permit shall be in accordance with section 13-231-84.

(j) Any commercial activity permittee who is denied a renewal of a commercial activity permit upon the expiration of a commercial activity permit and who has followed the procedures outlined in this section, shall be allowed an informal review as provided in section 13-231-33.

(k) The commercial activity permittee may challenge the final recommendation of the informal review as described in section 13-231-33, and shall be allowed an administrative hearing as provided in section 13-231-31.

(l) Having met the conditions of this section, the commercial activity permittee may retain the commercial activity permit during the time the commercial activity permit is under review, except as provided in section 13-231-6(d) and (e).

(m) The commercial activity permittee shall have no expectation of property rights and shall not be afforded an informal review or administrative hearing when circumstances present themselves that preclude the renewal of a commercial activity permit, e.g., acts of nature or war, privatization of a state boating facility, or the safe or efficient use of the state boating facility.” [Eff 2/24/94; am and comp ]  
(Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

5. Section 13-231-62, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-62 Transferability of commercial activity permits. (a) Commercial activity permits issued to individuals.

- (1) [A] Unless otherwise provided by law, a commercial activity permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial activity permit to another person by any arrangement, the commercial activity permit shall expire except as provided [herein] in this section with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial activity permit;
- (2) An original permittee holding both a commercial activity permit and a regular mooring permit, upon written application and approval by the department may retain the commercial activity permit, provided that within thirty days the permittee moves into the [small boat harbor] state boating facility another vessel owned by the permittee pursuant to the provisions of section 13-231-13; and
- (3) An original permittee holding a commercial activity permit and moored elsewhere may, upon written application to and approval by the department retain the commercial activity permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.
- (b) [The] Unless otherwise provided by law, the following rights, conditions, and restrictions apply to commercial activity permits issued to a corporation or other business entity.
  - (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial activity permit may transfer any or all stock or interest and retain the commercial activity permit and all other valid [small boat harbor] state boating facility use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a commercial activity permit. The department shall be notified within ten working days of:
    - (A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the effective date of these rules;
    - (B) The transfer of any stock or interest [which] that results in a change of the principal stockholder or owner; and
    - (C) The business transfer fee is paid on or before the date of transfer; and
  - (2) A commercial activity permit issued to a corporation or other business entity shall automatically expire:
    - (A) Upon the voluntary or involuntary dissolution of the corporation or business entity; or
    - (B) If the vessel or vessels operated under the commercial activity permit are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
    - (C) If the permittee fails to operate the vessel for which the commercial permit is issued for a period in excess of sixty days, except as provided



in section [13-231-61(a)(2)] 13-231-61(b)(11), and except when the permittee provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months.” [Eff 2/24/94 am and comp ]  
Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

6. Section 13-231-67, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-67 Limitation on commercial activity permits issued for the use of state boat [launching] ramps. (a) State boat [launching] ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. [Therefore, commercial] Commercial activity permits issued for the use of state boat [launching] ramps [facilities] shall be restricted to boats that are regularly transported by land and launched and recovered from boat [launching] ramps [and] needed or used in the course of [doing business] conducting commercial activities.

(b) A commercial activity permit shall be required for any [trailered] vessel [which] that is rented [off-site] at a site other than a state boating facility, including kayaks and other motorized or non-motorized rented vessels that may [but launches] launch or [recovers] recover from a state boat [launching] ramp or other state boating facility. The owner of [a trailered] the vessel shall be required to obtain a [commercial] commercial activity permit and comply with all other rules of the department governing commercial vessel activities. [Notwithstanding the limitation of the number of commercial permits which may be issued for launching ramps in subsections (d)(3) through (d)(9) below, the owner may apply for and may be issued a commercial permit for the number of vessels owned and registered in furtherance of its commercial use by the business on the effective date of these rules.] Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial activity permit requirements.

[(b)] (c) No commercial activity permits for the use of state boat [launching] ramps shall be issued for the purpose of embarking or disembarking passengers or cargo by small craft or lighter from a vessel [moored] offshore. Unless otherwise allowed by the department, the maximum size of a vessel that may be launched or recovered from a state boat ramp shall be limited to vessels that are transported by a trailer on State highways that meet the requirements of section 291-34, HRS, including the need for any special permits for non-standard or oversized loads. Exempt from this subsection are those vessels that utilize the small boat ramps for dry dock purposes.

[(c)] (d) A commercial activity permit issued for the use of a state boat [launching] ramp shall also be valid for all other state boat ramps on the same island [at which] where commercial activities are [permitted] allowed except those listed in subsection [(d)] (e); provided that the permittee [shall indicate] indicates which [launching] boat ramp is expected to be the location of primary use and unless otherwise provided by law, the commercial activity permittee shall pay all [the] fees due in accordance with section

13-234-25 [derived from two percent of gross revenues shall be paid to that account]. No commercial activity permit shall be issued for a [launching] boat ramp located on an island other than the place of business of the permittee.

[(d)] (e) The maximum number of commercial activity permits [which] that may be issued for the use of the following [launching] boat ramps are:

<u>Small boat ramps</u> <u>commercial activity permits</u>	<u>Number of permits</u>
(1) <u>Ala Wai</u>	[-]none
(2) <u>Keehi</u>	[-]none
[(3)] <u>Heeia Kea</u>	-7]
[(4)] (3) <u>Maunalua Bay</u>	[-5] <u>8</u>
(4) <u>Haleiwa</u>	<u>15</u>
(5) <u>Waianae</u>	<u>15</u>
(6) <u>Maalaea</u>	<u>none</u>
[(5)] (7) <u>Mala</u>	[-15] <u>18</u>
[(6)] (8) <u>Kihei</u>	[-15] <u>17</u>
[(7)] (9) <u>Manele</u>	[-]3
[(8)] (10) <u>Kaunakakai</u>	[-]5
(11) <u>Kikiaola</u>	<u>6</u>
[(9)] (12) <u>Kukuiula</u>	[-]6
(13) <u>Port Allen</u>	<u>5</u>
(14) <u>Kawaihae</u>	<u>10</u>
(15) <u>Honokohau</u>	<u>No limit</u>
(16) <u>Kailua Pier</u>	<u>8</u>
(17) <u>Puako</u>	<u>6</u>
(18) <u>Wailua River</u>	<u>15</u>
[(10)] (19) <u>All others</u>	[-no limit] <u>10"</u>

[Eff 2/24/94; am and comp ] (Auth: HRS "200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS "200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

7. Material, except source notes, to be repealed is bracketed. New material is underscored.

8. These amendments to chapters 13-230 and 13-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

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Peter T. Young, Chairperson  
Department of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

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Deputy Attorney General